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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**DECLARATION OF DAVID KO IN
SUPPORT OF PLAINTIFFS' MOTION
FOR EXPEDITED RELIEF AND
SANCTIONS FOR DEPOSITION
CONDUCT**

Judge: Hon. Vince Chhabria
Special Master Daniel Garrie

JAMS Ref. No.: 1200058674

I, David Ko, declare and state as follows:

1. I am a partner at the law firm of Keller Rohrback L.L.P. My firm is co-lead counsel to plaintiffs in *In re: Facebook, Inc. Consumer Privacy User Profile Litigation*, No. 18-md-02843-VC (N.D. Cal.). I am a member in good standing of the bar of the State of Washington and am admitted *pro hac vice* in the above-captioned matter.

2. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently to them.

3. This declaration is made in support of the Plaintiffs' Motion for Expedited Relief and Sanctions for Deposition Conduct. Consistent with Local Rule 37-1, Plaintiffs conferred with Facebook prior to filing this motion and are engaged in good faith negotiations regarding conduct going forward in this action.

4. Plaintiffs sent a draft deposition notice that included Topics 1 and 3 on December 23, 2021. Attached as Exhibit 1 is a true and correct copy of the draft notice.

5. On March 1, 2022, Plaintiffs formally served the 30(b)(6) deposition notice that included Topics 1 and 3. Attached as Exhibit 2 is a true and correct copy of the Notice.

6. On March 29, 2022, Facebook served its objections and responses to Plaintiffs' Notice. Attached as Exhibit 3 is a true and correct copy of Facebook's objections and responses.

7. Plaintiffs have met and conferred with Facebook's counsel on multiple occasions regarding the scope of the notice. Facebook never indicated that it was limiting the scope of Topics 1 and 3 to policies and procedures regarding enforcement to exclude what actually happened that may have informed enforcement policies and procedures. Attached as Exhibit 4 is a true and correct copy of an email exchange with Facebook's counsel regarding the scope of the notice, and Facebook's designation of Allison Hendrix to testify as to Topics 1, 2(b), 2(d), 3, and portions of Topic 6. Until the deposition was underway, Facebook's counsel did not indicate that it construed the notice in this fashion.

8. During the deposition, Ms. Hendrix was repeatedly instructed by counsel for Facebook not to answer questions that counsel for Facebook unilaterally declared were outside the scope of the 30(b)(6) deposition notice. I repeatedly informed counsel for Facebook that such an instruction was improper. In one of the many instances the parties discussed this issue in which the Special Master was privy to and present, Facebook's counsel claimed that it was "deposition 101" that Ms. Hendrix be instructed not to testify outside of the scope of the 30(b)(6) deposition notice.

9. A true and correct copy of the rough transcript of the May 5, 2022 deposition is attached as Exhibit 5.

10. Plaintiffs met and conferred extensively with Facebook before and after the deposition regarding the scope of this deposition. Plaintiffs remain willing to address prospective relief regarding ongoing deposition conduct. Attached as Exhibit 6 is a true and correct copy of an email exchange with Facebook's counsel regarding these negotiations. This exchange makes clear that prior to the deposition, and even now, Facebook has not provided written communications summarizing what it deems to be excluded from the noticed topics. Plaintiffs have repeatedly sought such clarity.

11. I, along with a number of other partners and associates at Keller Rohrback L.L.P. and our co-lead counsel firm Bleichmar Fonti & Auld L.L.P., including Derek Loeser, Lesley Weaver, Cari Laufenberg, Adele Daniel, and Emma Wright, including paralegals and legal assistances at both firms spent substantial time preparing for the 30(b)(6) deposition of Allison Hendrix on May 5, 2022.

12. I specifically spent 32.5 hours preparing for the deposition and 10.1 hours conducting the deposition, for a total of 42.6 hours. My billing rate in this matter is \$735 per hour. The total lodestar for my time spent preparing for and conducting the 30(b)(6) deposition of Allison Hendrix is \$31,311.00.

13. Plaintiffs have not yet received an accounting of time the Special Master spent on these matters. Plaintiffs will present this accounting when it is received for the Special Master's consideration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of May 2022, in Seattle, Washington.

By: /s/ David Ko
David Ko